REMARKS

Claims 25 and 39-42 are currently pending and stand rejected in the Office Action mailed August 18, 2004 on various grounds. Claim 25 has been amended. Applicant has carefully considered the Office Action and associated comments therein and in response submits the following remarks.

Claim 25 was rejected under 35 U.S.C. § 112 on the ground that line 9 was unclear regarding which "event" was being referred to. Claim 25 has been amended to more clearly indicate that the event referred to is the event in line 3. Although Applicant did not use the wording suggested by the Patent Office, Applicant does appreciate the suggestion.

Claim 25 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,797,127, to Walker et al. in view of "ebay.com" (a printout from the ebay website dated January 5, 2004) and Official Notice. This rejection is respectfully traversed.

In the Office Action, the Patent Office admits that Walker fails to teach several elements of claim 25. Specifically, the Patent Office admits that Walker fails to disclose: "the price terms set between participants in the exchange; the options involving sporting events, the price determined by market conditions, and vesting of the option occurring through advancement to or qualification for the event associated with the attendance right." Applicant appreciates this admission by the Patent Office, but nevertheless maintains all previously-submitted distinguishing arguments made regarding Walker.

The Office Action then relies on the ebay.com reference as disclosing various elements of claim 25 missing from Walker. However, as noted above, the ebay.com reference was printed

on January 5, 2004. The Office Action does not state why the Patent Office has asserted ebay.com to be prior art; presumably it is alleged to be prior art under 35 U.S.C. § 102(b). But since the subject application has a filing date of November 5, 1999, no publication published after November 5, 1998 qualifies as prior art under § 102(b). Thus, ebay.com, regardless of what it teaches (and Applicant does not concede that it teaches any element of claim 25), is not prior art.

Moreover, the Office Action concedes that Walker and ebay.com, even when combined, do not render claim 25 obvious, and further relies on "Official Notice" to support the § 103 rejection. In turn, the Official Notice relies on a previously cited document referred to as "Official Athletic Site of the University of Maryland," mailed with the August 16, 2002 Office Action. But that document is dated August 6, 2002. Thus, like the ebay.com reference, the University of Maryland document is not prior art under 35 U.S.C. § 102(b), and the taking of Official Notice based on the University of Maryland document is respectfully traversed. Moreover, Applicant respectfully requests the Patent Office to identify all references relied upon to support any and all takings of Official Notice, to the extent that such references differ from the references discussed above.

Because two of the three references relied upon are not prior art, the rejection of claim 25 is improper and should be withdrawn.

Further, the Office Action does not separately address dependent claims 39-42. Even if claim 25 were rendered obvious by the cited references, that fact alone would not render the dependent claims obvious. A proper rejection of those claims requires a separate analysis of *each claim* and presentation of a *prima facie* case of obviousness for *each claim*.

Applicant respectfully reminds the Patent Office that it is improper to use the subject claims as a roadmap for combining references. References cannot be combined unless there is some teaching in the prior art for such a combination.

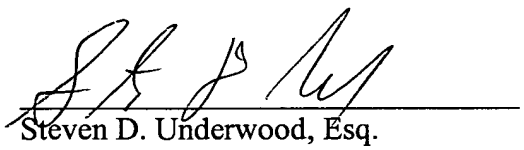
Applicant also respectfully calls attention to MPEP 707.07(g), which specifies that piecemeal examination should be avoided as much as possible, and that each claim should be rejected on all valid grounds available. See also 37 C.F.R. § 1.104(c)(2) ("the examiner must cite the best references at his or her command" and "the particular part relied on must be designated as nearly as practicable").

No fee is believed to be due with this Amendment. However, if any fee is due, please charge that fee to Deposit Account No. 50-0310.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: November 15, 2004



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